

EXHIBIT 5

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW, 11th Floor East
Washington, D.C. 20005-3314
202.218.0000 main
202.218.0020 main fax
www.sheppardmullin.com

Writer's Direct Line: 202-741-8426
bshirk@sheppardmullin.com

December 8, 2011

Our File Number: 27ZW-161908

VIA FEDERAL EXPRESS

Chief of Staff
FOIA Appellate Authority
Defense Commissary Agency
1300 E. Avenue
Fort Lee, VA 23801-1800

Re: Freedom of Information Act Appeal – FOIA-11-109

Dear Sir or Madam:

This is an appeal pursuant to 5 U.S.C. § 552(a)(6) in connection with the Defense Commissary Agency's ("DeCA" or the "Agency") refusal to produce certain documents within its control in response to the Freedom of Information Act request ("FOIA") that we submitted on May 19, 2011 on behalf of our client, E&E Enterprises Global, Inc. ("E&E").¹ As set forth in Mr. William E. Sherman's letter of November 29, 2011, DeCA partially denied E&E's FOIA request and withheld two-hundred forty (240) documents "in their entirety" based on the conclusory assertion that the documents are subject to "U.S. Code, Section 552, Exemption b(5) which protects inter-agency or intra-agency material which would not be available by law to a party other than an agency in litigation with the Agency."²

The documents sought by E&E relate to the performance and termination of E&E's contract, No. HC 1013-08-0034 (the "Contract"). Specifically, E&E's FOIA request sought, among other things, the following categories of documents:

- documents relating to and communications regarding E&E's performance of the Contract;
- documents and communications regarding the installation and/or testing of backhaul lines in connection with the Contract;

¹ A true and correct copy of E&E's FOIA request is attached hereto as Exhibit 1.

² A true and correct copy of DeCA's partial denial letter is attached hereto as Exhibit 2.

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- communications directing and/or instructing that E&E commence installation and/or testing of backhaul lines in connection with the Contract;
- communications directing and/or instructing that E&E obtain backhaul carrier agreements for the Contract;
- documents and communications regarding directions and/or instructions that E&E commence installation of the Network Operation Centers for the Contract;
- documents and communications regarding changes requested by DeCA to the Very Small Aperture Terminal network architecture in connection with the Contract;
- documents generated, contributed to or maintained in connection with the termination of the Contract; and
- communications by and between DeCA and the SBA regarding the termination of the Contract.

These materials relate *only* to E&E; they are not negotiation documents, they are not law enforcement documents, they are not audit documents, and they certainly contain no information regarding any company other than E&E. DeCA's FOIA decision provides no explanation of how written material regarding the performance and termination of E&E's Contract possibly could possibly be exempt from disclosure to E&E.

As set forth in more detail below and in light of the policy of FOIA favoring disclosure, DeCA's refusal to produce the requested records violates FOIA and the withheld documents should be made available immediately. Because these documents are critically related to E&E's due process rights—namely, the ongoing termination for convenience settlement proceedings under Contract No. HC 1013-08-0034 (the "Contract")—*time is of the essence*.

The Standard Of Review For This Appeal

This Request must be considered against the backdrop of memoranda issued by President Barack Obama³ and Attorney General Eric Holder⁴, which emphasize that FOIA

³ See Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (January 21, 2009) ("President Obama's FOIA Memorandum").

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reflects a “profound national commitment to ensuring an open Government.” President Obama’s FOIA Memorandum directs agencies to “adopt a presumption in favor of disclosure.” Pursuant to this directive, DeCA must respond “promptly and in a spirit of cooperation.”

Consistent with the FOIA memoranda, Camillo DeSantis, FOIA Officer for DeCA, stated as follows in an email to me dated August 1, 2011:

we agree with the theory of open government and all FOIA requests are viewed from a “presumption of release” perspective. More simply, we view FOIA as a release statute and not a withholding one and therefore attempt to release as much as possible and only apply the exemptions when required.⁵

Accordingly, DeCA is required to disclose information under FOIA unless the information is required to be exempted under clearly delineated statutory language. As the Supreme Court has stated, “these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act... These exemptions are explicitly made exclusive, and must be narrowly construed.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citations and internal quotations omitted); *see also Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 631 (1982).

Exemption Five of FOIA

Exemption Five to FOIA, as a general rule, precludes the disclosure of materials that would be protected under the attorney-client privilege, the attorney work-product privilege, or the executive “deliberative process” privilege. *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 862 (D.D.C. 1980). The key question in determining the applicability of Exemption Five is whether the disclosure of the materials would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions. *Dudman Commc’ns Corp v. Dep’t of Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987). Further, Exemption Five does not apply to protect disclosure of compilations of factual data or investigative matters that may be reasonably segregated from deliberative material. *Env’tl. Prot. Agency v. Mink*, 410 U.S. 73, 90 (1973).

⁴ See Attorney General Holder’s Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (March, 19, 2009) (“Attorney General Holder’s FOIA Guidelines”).

⁵ A true and correct copy of Camillo DeSantis’ August 1, 2011 email is attached hereto as Exhibit 3.

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At the outset, we note that DeCA has not identified a specific basis under Exemption Five for withholding *any* of the 240 documents. In light of the overwhelming thrust of FOIA towards complete disclosure, DeCA is required to support its assertion of Exemption Five with specificity and detail. A conclusory allegation that the sought-after materials are exempt, without factual support, is insufficient to meet the Agency's burden of proof under 5 U.S.C. § 552. *Senate of the Commonwealth of Puerto Rico on Behalf of Judiciary Comm. v. Dep't of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987) ("We have simultaneously cautioned that 'conclusory assertions of privilege will not suffice to carry' the agency's burden.") (citations omitted).

DeCA's blanket assertion of Exemption Five can only be described as arbitrary and capricious. Only one email was produced by DeCA, which amounts to an implausible assertion that virtually all DeCA e-mail traffic relating to the Contract is somehow a privileged inter-agency or intra-agency communication within Exemption Five. That simply is not the case. E&E's own records and documents produced by the Defense Information Technology Contracting Office ("DITCO") in response to an identical FOIA request demonstrate that DeCA's assertion of Exemption Five was improper.

DITCO produced a number of e-mails in response to E&E's FOIA request from DeCA personnel relating to contract performance. Incredibly, not one of those emails was produced by DeCA in response to E&E's FOIA request. This includes, for example, an e-mail from Scott Schultz, Chief, Infrastructure/ NetComm Division of DeCA's Directorate of Program Management to Ron Hill of E&E, dated January 16, 2009, which forwarded to E&E a letter authorizing "E&E Enterprises and/or its subcontractors to order circuits on DeCA's behalf in support of the current DSL/VSAT contract."⁶ The inadequacy of DeCA's assertion of Exemption Five is established by (i) E&E's possession of these documents in advance of DeCA's abrupt termination of the Contract, and (ii) DITCO's production of the same documents to E&E in response to an identical FOIA request without *any* objection.

Moreover, it cannot be disputed that E&E's FOIA request sought, among other things, factual information that is not exempt from disclosure under Exemption Five. Exemption Five differentiates between documents that reflect deliberative or policy-making processes on the one hand and purely factual investigative matters on the other, and requires disclosure of documents that are essentially factual. *Mead Data Central, Inc. v. United States Dept. of Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977). In other words, while there exists a legitimate deliberative process privilege, it does not permit DeCA to withhold underlying factual information in a document unless it would indirectly reveal the advice, opinions and evaluations circulated within the agency as part of its decision making process. *Id.* at 254 n.28. Therefore,

⁶ A true and correct copy of the January 16, 2009 email, with attachment, is attached hereto as Exhibit 4.

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factual information that is severable from the opinions or recommendations in a document must be disclosed. *American Petroleum Institute v. EPA*, 846 F. Supp. 83, 90 (D.D.C. 1994); *Vaughn v. Rosen*, 383 F. Supp. 1049, 1053-54 (D.D.C. 1974), *aff'd* 523 F.2d 1136 (D.C. Cir. 1975).

The release of factual content is mandatory and not subject to Exemption Five because its disclosure would not have an adverse impact on DeCA's decision-making process and the information is not otherwise privileged. *Wayland v. Nat'l Labor Relations Board*, 627 F. Supp. 1473 (M.D. Tenn. 1986) (requested information not exempt because NLRB did not show that statements were other than objective reporting of facts); *Coastal Gas Corp.*, 617 F.2d 854 (finding that memorandums sent from the regional counsel to auditors working in the field issued in response to requests for interpretations of regulations within the context of particular facts encountered during audits—which were not suggestions or recommendations as to what agency policy should be and which contained nothing subjective or personal—were not exempt under the Exemption Five).

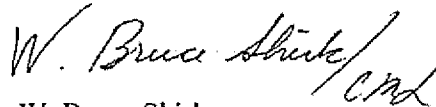
Production Of A Privilege Log

DeCA does not specify which specific records are being withheld and what privilege it is asserting to justify its non-production of those records. Absolutely no detail is provided regarding any of the withheld records. Therefore, while this appeal is pending, and in order to understand the basis for DeCA's partial denial, E&E respectfully requests that DeCA produce a privilege log that details for each withheld document: (i) type of document; (ii) author and recipient(s); (iii) date; (iv) subject matter; and (v) ground(s) for withholding the document.

* * *

For the reasons set forth above, the documents withheld by DeCA are not properly exempt under Exemption Five of FOIA. It appears that DeCA acted arbitrarily and capriciously by denying access to the documentation requested by E&E. We respectfully request that DeCA grant this appeal and promptly produce copies of the requested records to E&E through its undersigned counsel. We look forward to your response within the 20-day deadline required by statute. *See* 5 U.S.C. § 552(a)(6)(A)(ii). As noted above, time is of the essence. Should you have any questions, please call me at (202) 218-0000 or email me at bshirk@sheppardmullin.com.

Sincerely,

Handwritten signature of W. Bruce Shirk in cursive, with the initials 'WBS' and 'CML' visible.

W. Bruce Shirk

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

EXHIBIT 1



1300 I Street, NW | 11th Floor East | Washington, D.C. 20005-3314
202-218-0000 office | 202-218-0020 fax | www.sheppardmullin.com

Writer's Direct Line: 202-741-8426
bshirk@sheppardmullin.com

Our File Number: 0003-000003

May 19, 2011

**VIA FIRST CLASS MAIL
AND EMAIL**

Defense Commissary Agency General Counsel
Attention FOIA Officer
1300 E Avenue
Fort Lee VA 23801-1800
Email: FOIA@deca.mil

Re: Freedom of Information Act Request to Defense Commissary Agency

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I hereby request on behalf of E&E Enterprises Global, Inc. ("E&E") all materials the Defense Commissary Agency ("DeCA") has in its files containing, referring to, or relating to the following:

1. All communications¹ by and between DeCA and the Small Business Administration ("SBA") providing the SBA with advance notice that Contract HC1013-08-D-0034 was being terminated.
2. All communications by and between DeCA and the SBA on or after March 9, 2009 regarding the termination of Contract HC1013-08-D-0034.
3. All communications sent from or received by Ron Warfield regarding terminating Contract HC1013-08-D-0034.
4. All communications sent from or received by Scott Shultz regarding terminating Contract HC1013-08-D-0034.

¹ The term "communications" means every manner or means of transfer or exchange of information, and every transfer or exchange of information, whether orally or by document, or whether such exchange occurred face-to-face, by telephone, telecopy, mail, email, personal delivery, or otherwise.

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5. All documents² and communications regarding establishing the Very Small Aperture Terminal ("VSAT") network architecture in connection with Contract HC1013-08-D-0034.
6. All documents generated, contributed to or maintained in connection with the development of the Project Scope of Work for Contract HC1013-08-D-0034 by Mike Boring, CIV DeCA HQ PM; Frederick James, CIV DeCA HQ PM; David J. Melton CIV DeCA PMIP; Ron Hill; Louis Scott, CIV, DeCA HQ PM; Scott M. Shultz; Terry Zacharias; Brenda Leonard; Duane Woodfin; Karen E Kinkaid, CIV DISA PLD.
7. All documents generated, contributed to or maintained in connection with the award, performance or termination of Contract HC1013-08-D-0034 by Mike Boring, CIV DeCA HQ PM; Frederick James, CIV DeCA HQ PM; David J. Melton CIV DeCA PMIP; Ron Hill; Louis Scott, CIV, DeCA HQ PM; Scott M. Shultz; Terry Zacharias; Brenda Leonard; Duane Woodfin; Karen E Kinkaid, CIV DISA PLD.
8. All communications sent from or received by Ron Warfield regarding establishing the VSAT network architecture in connection with Contract HC1013-08-D-0034.
9. All communications sent from or received by Scott Shultz regarding establishing the VSAT network architecture in connection with Contract HC1013-08-D-0034.
10. All communications by and between DeCA and DISA/DITCO regarding the termination of Contract HC1013-08-D-0034, including but not limited to communications instructing DISA/DITCO not to give SBA prior notice of the termination.
11. All documents relating to and communications by and between DeCA and DISA/DITCO regarding E&E's performance of Contract HC1013-08-D-0034.
12. All documents relating to and communications by and between DeCA and DISA/DITCO regarding VSAT Tracker meetings.
13. All documents relating to and communications by and between DeCA and DISA/DITCO regarding conference calls convened by DISA/DITCO

² The term "documents" is used herein in its broadest sense and, without limitation, means any original writing or other data compilation regardless of origin, location or form.

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Contracting Officer Brenda Leonard Leonard, including but not limited to meetings or conference calls on the following dates: December 3, 2008, December 17, 2008, January 7, 2009, January 1, 2009, January 21, 2009, February 11, 2009, February 18, 2009, February 25, 2009 and March 4, 2009.

14. All documents and communications regarding work performed by E&E in connection with the VSAT network architecture for Contract HC1013-08-D-0034.
15. All communications sent from or received by Ron Warfield regarding work performed by E&E in connection with the VSAT network architecture for Contract HC1013-08-D-0034.
16. All communications sent from or received by Scott Shultz regarding work performed by E&E in connection with the VSAT network architecture for Contract HC1013-08-D-0034.
17. All documents and communications regarding withholding and/or stopping payment to E&E if it did not establish the VSAT network architecture in connection with Contract HC1013-08-D-0034.
18. All documents and communications regarding changes requested by DISA/DITCO to the VSAT network architecture in connection with Contract HC1013-08-D-0034.
19. All documents and communications regarding changes requested by DeCA to the VSAT network architecture in connection with Contract HC1013-08-D-0034.
20. All communications sent from or received by Ron Warfield regarding changes to the VSAT network architecture in connection with Contract HC1013-08-D-0034.
21. All communications sent from or received by Scott Shultz regarding changes to the VSAT network architecture in connection with Contract HC1013-08-D-0034.
22. All documents and communications regarding the installation and/or completion of the Network Operation Centers ("NOCs") in the United States or its territories in connection with Contract HC1013-08-D-0034.

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23. All documents and communications regarding the installation and/or completion of the NOCs in Europe in connection with Contract HC1013-08-D-0034.
24. All documents and communications regarding the installation and/or completion of the NOCs in the Pacific Rim in connection with Contract HC1013-08-D-0034.
25. All communications by and between Ron Warfield regarding the installation and/or completion of the NOCs for Contract HC1013-08-D-0034.
26. All communications by and between Scott Shultz regarding the installation and/or completion of the NOCs for Contract HC1013-08-D-0034.
27. All documents and communications regarding any directions and/or instructions that E&E commence installation of the NOCs for Contract HC1013-08-D-0034.
28. All documents and communications regarding withholding and/or stopping payment to E&E if it did not commence installation of the NOCs for Contract HC1013-08-D-0034.
29. All communications sent from or received by Ron Warfield directing and/or instructing E&E to commence installation of the NOCs for Contract HC1013-08-D-0034.
30. All communications sent from or received by Scott Shultz directing and/or instructing E&E to commence installation of the NOCs for Contract HC1013-08-D-0034.
31. All documents and communications regarding work performed by E&E in connection with the NOCs for Contract HC1013-08-D-0034.
32. All communications sent from or received by Ron Warfield regarding work performed by E&E in connection with the NOCs for Contract HC1013-08-D-0034.
33. All communications sent from or received by Scott Shultz regarding work performed by E&E in connection with the NOCs for Contract HC1013-08-D-0034.

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34. All documents and communications regarding the installation and/or testing of backhaul lines in connection with Contract HC1013-08-D-0034.
35. All communications sent from or received by Ron Warfield regarding the installation and/or testing of backhaul lines in connection with Contract HC1013-08-D-0034.
36. All communications sent from or received by Scott Shultz regarding the installation and/or testing of backhaul lines in connection with Contract HC1013-08-D-0034.
37. All communications sent from or received by Ron Warfield directing and/or instructing that E&E commence installation and/or testing of backhaul lines in connection with Contract HC1013-08-D-0034.
38. All communications sent from or received by Scott Shultz directing and/or instructing that E&E commence installation and/or testing of backhaul lines in connection with Contract HC1013-08-D-0034.
39. All documents and communications regarding work performed by E&E in connection with the backhaul lines for Contract HC1013-08-D-0034.
40. All communications sent from or received by Ron Warfield regarding work performed by E&E in connection with the backhaul lines for Contract HC1013-08-D-0034.
41. All communications sent from or received by Scott Shultz regarding work performed by E&E in connection with the backhaul lines for Contract HC1013-08-D-0034.
42. All documents and communications regarding backhaul carrier agreements connection with Contract HC1013-08-D-0034.
43. All communications sent from or received by Ron Warfield directing and/or instructing that E&E obtain backhaul carrier agreements for Contract HC1013-08-D-0034.
44. All communications sent from or received by Scott Shultz directing and/or instructing that E&E obtain backhaul carrier agreements for Contract HC1013-08-D-0034.
45. All documents and communications regarding backhaul carrier agreements obtained by E&E in connection with Contract HC1013-08-D-0034.

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46. All communications sent from or received by Ron Warfield regarding backhaul carrier agreements obtained by E&E in connection with Contract HC1013-08-D-0034.
47. All communications sent from or received by Scott Shultz regarding backhaul carrier agreements obtained by E&E in connection with Contract HC1013-08-D-0034.
48. All communications sent from or received by Ron Warfield regarding withholding and/or stopping payment to E&E in connection with Contract HC1013-08-D-0034.
49. All communications sent from or received by Scott Shultz regarding withholding and/or stopping payment to E&E in connection with Contract HC1013-08-D-0034.
50. All communications by and between the Oceana and Sugar Grove commissaries regarding VSAT.
51. All communications sent from or received by the Oceana commissary regarding VSAT.
52. All communications sent from or received by the Sugar Grove commissary regarding VSAT.
53. All communications by and between the Oceana and Sugar Grove commissaries regarding E&E.
54. All communications sent from or received by the Oceana commissary regarding E&E.
55. All communications sent from or received by the Sugar Grove commissary regarding E&E.
56. All documents generated by DeCA's Internal Control Senior Assessment Team ("DeCA's SAT") in connection with reviews of DeCA's compliance with the internal control requirements of OMB Circular A-123, Appendix A for Fiscal Years (FYs) 2008, 2009 and 2010 relating to, referencing or identifying any aspect of the planning, budgeting, design, drafting and finalization of the Project Work Statement and solicitation for DeCA's turn-key Commercial Off The Shelf (COTS) Managed and Integrated Broadband/Very Small Aperture Terminal (VSAT) network solution to augment the existing terrestrial network, and to provide data

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communications to commissaries worldwide (approximately 174 CONUS and 86 OCONUS locations) and Central Distribution Centers (CDCs) worldwide (10 OCONUS) ("VSAT network solution"). (References: (i) **Solicitation Number:** DISA/DITCO HC1013-08-R-2004; Synopsis, March 17, 2008. *available at:* <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=2d999a355f7a41e568c02dd8a6e8ecd4&cview=0>; (ii) *Defense Commissary Performance and Accountability Report*, Fiscal Year 2010 at 61.)

57. All documents generated by DeCA's SAT in connection with reviews of DeCA's compliance with the internal control requirements of OMB A-123, Appendix for FYs 2008, 2009 and 2010 relating to, referencing or identifying any aspect of the planning, budgeting and design of the VSAT network solution, including but not limited to any documents relating to or referencing DeCA's previous award to and termination of a previous contract for a similar VSAT network solution to Arrowhead Global Solutions, Inc. (References: see Request No. 56. above)
58. All documents generated in connection with DeCA's Balanced Score Card assessments for FYs 2008, 2009 and 2010 relating to, referencing or identifying any aspect of the planning, budgeting and design of the VSAT network solution, including but not limited to any documents relating to or referencing DeCA's previous award to and termination of a previous contract for a similar VSAT network to Arrowhead Global Solutions, Inc.
59. All documents generated in connection with any internal or external assessment or discussion of DeCA's effort to "achieve a strategically focused organization that aligns investments with strategic priorities" relating to, referencing, or identifying DeCA's award of Contract HC1013D-0-D-0034 to E&E Enterprises Global Solutions and subsequent termination of that contract.
60. All documents generated by DeCA's Directorates of Performance and Policy, Information Technology, Corporate Planning or Contracting relating to Solicitation HC1013-08-R-2004 issued on DeCA's behalf by DISA/DITCO identifying, discussing, suggesting or otherwise relating to the possibility or likelihood that the resulting Contract No. HC1013D-0-D-0034 would be terminated due to insufficient funding or for any other reason.

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61. All documents generated by DeCA's Directorates of Performance and Policy, Information Technology, Corporate Planning or Contracting dated on or before March 12, 2009, relating to Contract No. HC1013D-0-D-0034 and identifying, discussing, suggesting or otherwise relating to the possibility or likelihood that the contract would be terminated for convenience of the government
62. All documents generated or maintained by DeCA's Directorates of Performance and Policy, Information Technology, Corporate Planning or Contracting relating to issued on DeCA's behalf by DISA/DITCO identifying, discussing, suggesting or otherwise indicating that any representative of DeCA consulted with the managements of DeCA's 254 commissary stores as to their views regarding the value, viability or satisfactory operation of the VSAT network solution intended to be implemented if the work under Solicitation HC1013-08-R-2004 were awarded.
63. All documents DeCA's Directorates of Performance and Policy, Information Technology, Corporate Planning or Contracting indicating, discussing or addressing the possibility that Solicitation HC1013-08-R-0024 could be drafted so as to minimize the cost to DeCA in the event the agency directed DISA/DITCO to terminate any resulting contract. (Reference: *Defense Commissary Performance and Accountability Report*, Fiscal Year 2010 at 71.)

We will send you our remittance for any expense involved in responding to this request up to \$100.00. Should the cost of responding to this request exceed \$100.00, please notify me in advance of incurring such costs.

Thank you in advance for your prompt attention to this matter.

Sincerely,



W. Bruce Shirk

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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cc: Ernest Green Jr., President/CEO
E&E Enterprises Global, Inc.

EXHIBIT 2



DEFENSE COMMISSARY AGENCY
HEADQUARTERS
1300 E AVENUE
FORT LEE, VIRGINIA 23801-1800

November 29, 2011
FOIA-11-109

W. Bruce Shirk
Sheppard Mullin Richter & Hampton LLP
1300 I Street, NW
11th Floor East
Washington, DC 20005-3314

Dear Mr. Shirk,

This correspondence is in reference to your Freedom of Information Act (FOIA) request #11-109, in which you requested information regarding contract HC1013-08-D-0034 between the Defense Commissary Agency and E & E Enterprises Global, Inc.

A CD containing 128 documents responsive to your request is enclosed. However, 240 documents are being withheld in their entirety. This information is being withheld under Title 5, U. S. Code, Section 552, Exemption b(5) which protects inter-agency or intra-agency material which would not be available by law to a party other than an agency in litigation with the Agency.

Because the above referenced information has been withheld, your FOIA request is considered to be partially denied. You are hereby advised of your right to appeal this determination under DoD Directive 5400.7-R. Your appeal must be provided to the address listed below, in writing, no later than 60 calendar days after the date of this correspondence. You should be aware that there may be fees associated with the processing of an appeal.

Chief of Staff
FOIA Appellate Authority
Defense Commissary Agency
1300 E. Avenue
Fort Lee, VA 23801-1800

It is noted that you remitted prepayment of processing fees in the amount of \$7,040.00 for this request. However, processing costs for your request have exceeded that amount. An accounting of those fees is as follows:

43 Hours of Search @ 44.00	\$1,892.00
116 Hours of Review @ 44.00	4,884.00
14 Hours of coordination @44.00	<u>616.00</u>
Total	\$7,392.00

Therefore, please remit payment in the amount of \$352.00, made payable to the Treasurer of the United States and send it to:

Defense Commissary Agency
Attn: Freedom of Information Act Officer
Office of General Counsel
Defense Commissary Agency
1300 E Avenue
Ft. Lee, VA 23801

Any questions or concerns regarding FOIA policy should be directed to the FOIA Officer, Camillo R. DeSantis, at 804-734-8000, Extension 4-8116 or e-mail at camillo.desantis@deca.mil.

Sincerely,

A handwritten signature in dark ink, appearing to read "William E. Sherman", followed by a horizontal line.

William E. Sherman
General Counsel

Enclosures: As stated

EXHIBIT 3

From: "DeSantis, Camillo R CIV (US) DeCA HQ GC" <Camillo.DeSantis@deca.mil>
Date: August 1, 2011 9:52:23 AM CDT
To: Bruce Shirk <BShirk@sheppardmullin.com>
Subject: RE: Defense Commissary Agency Freedom of Information Act Request 11-109 (E&E Enterprises)

Thanks for your understanding.

One of the reasons for FOIA being located with me is that I have no direct connection with any of the other divisions here in the Agency (Everybody avoids General Counsel) therefore I never have "a horse in the race" so it is quite easy to remain objective. Also, we agree with the theory of open government and all FOIA requests are viewed from a "presumption of release" perspective. More simply, we view FOIA as a release statute and not a withholding one and therefore attempt to release as much as possible and only apply the exemptions when required.

I will keep you posted of my progress.

Respectfully,

Camillo DeSantis
Freedom of Information Act Officer
Office of General Counsel
Defense Commissary Agency
804-734-8000 Ext 48116

-----Original Message-----

From: Bruce Shirk [<mailto:BShirk@sheppardmullin.com>]
Sent: Monday, August 01, 2011 10:41 AM
To: DeSantis, Camillo R CIV (US) DeCA HQ GC
Subject: RE: Defense Commissary Agency Freedom of Information Act Request 11-109 (E&E Enterprises)

Mr. DeSantis:

Thank you for your prompt response and your confirmation that you personally are performing the review and making the relevant decisions. Unfortunately, it has not always been my experience that FOIA reviews are performed in an objective manner, particularly when the review is related to a potential dispute.

I have never had any doubt, by the way, that, you personally will perform the review in an objective manner. (Which is not, of course, to say I will agree with your conclusions---but that is another issue which we may or may not confront)

Also, I understand that when the FOIA responsibility is only one of several it can not always be top priority.

Sincerely

Bruce Shirk

Bruce Shirk

202.741.8426 | d

202.312.9503 | df

202.468.6853 | c

<mailto:BShirk@sheppardmullin.com> | <http://www.sheppardmullin.com/bshirk>

SheppardMullin

Sheppard Mullin Richter & Hampton LLP

1300 I Street, N.W.

11th Floor East

Washington, DC 20005-3314

202.218.0000 | p

<http://www.sheppardmullin.com>

-----Original Message-----

From: DeSantis, Camillo R CIV (US) DeCA HQ GC

[<mailto:Camillo.DeSantis@deca.mil>]

Sent: Monday, August 01, 2011 8:07 AM

To: Bruce Shirk

Subject: RE: Defense Commissary Agency Freedom of Information Act
Request 11-109 (E&E Enterprises)

Mr. Shirk,

It is the very fact that I am the only one reviewing all the documents that is causing it to take so long. Further, FOIA is only one of my several duties so I am working on it as quickly as possible.

My review, however, is not based upon the classification of the information but rather must be made against the various exemptions of the FOIA and although I agree that most if not all of the information is releaseable I must review each and every document.

You can be assured I will complete the review as quickly as possible.

Respectfully,

Camillo R. DeSantis

Law Office Manager, Freedom of Information and Privacy Act Officer,

Supervisory Paralegal Specialist Office of General Counsel Defense
Commissary Agency 804-734-8000 Ext 4-8116

-----Original Message-----

From: Bruce Shirk [mailto:BShirk@sheppardmullin.com]
Sent: Friday, July 29, 2011 2:02 PM
To: DeSantis, Camillo R CIV (US) DeCA HQ GC
Subject: RE: Defense Commissary Agency Freedom of Information Act
Request 11-109 (E&E Enterprises)

Mr. DeSantis--

Thank you for your prompt response.

Based on our understanding of the contract, there should be little if any documentation that is not releasable. The contract is not classified and, other than a remote possibility of communications that could be subject to the attorney-client privilege, it is highly unlikely that any documents would be subject to one or more of the exemptions. This system was for commissaries, not war-fighting or intelligence.

I of course understand that you must make the calls regarding releasability as you see them. But I would hope those calls are being made by you rather than someone else in the agency.

Thanks

Bruce Shirk
202.741.8426 | d
202.312.9503 | df
202.468.6853 | c
<mailto:BShirk@sheppardmullin.com> | <http://www.sheppardmullin.com/bshirk>

SheppardMullin
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
11th Floor East
Washington, DC 20005-3314
202.218.0000 | p
<http://www.sheppardmullin.com>

-----Original Message-----

From: DeSantis, Camillo R CIV (US) DeCA HQ GC
[mailto:Camillo.DeSantis@deca.mil]
Sent: Friday, July 29, 2011 12:15 PM
To: Bruce Shirk

Subject: RE: Defense Commissary Agency Freedom of Information Act
Request 11-109 (E&E Enterprises)

Good Afternoon Sir,

Review of the documents with regard to their releasability continues.

Respectfully,

Camillo R. Desantis
Freedom of Information Act Officer
Office of General Counsel
Defense Commissary Agency
804-734-8000 Ext. 4-8116

-----Original Message-----

From: Bruce Shirk [mailto:BShirk@sheppardmullin.com]
Sent: Friday, July 29, 2011 11:51 AM
To: DeSantis, Camillo R CIV (US) DeCA HQ GC
Subject: Defense Commissary Agency Freedom of Information Act Request
11-109 (E&E Enterprises)

Mr De Santis--

Can you please advise as to status of DeCA's response to the above FOIA
request?

Thanks

Bruce Shirk
202.741.8426 | d
202.312.9503 | df
202.468.6853 | c
<mailto:BShirk@sheppardmullin.com> | <http://www.sheppardmullin.com/bshirk>

SheppardMullin
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
11th Floor East
Washington, DC 20005-3314
202.218.0000 | p
<http://www.sheppardmullin.com>

-----Original Message-----

From: DeSantis, Camillo R CIV (US) DeCA HQ GC
[mailto:Camillo.DeSantis@deca.mil]

Sent: Wednesday, June 15, 2011 6:56 AM
To: Bruce Shirk
Subject: RE: Attorney Representation Letter

No problem, Sir.

-----Original Message-----

From: Bruce Shirk [mailto:BShirk@sheppardmullin.com]
Sent: Tuesday, June 14, 2011 3:52 PM
To: DeSantis, Camillo R CIV (US) DeCA HQ GC
Subject: RE: Attorney Representation Letter

Mr. DeSantis--sorry about that. My client confused you with the FOIA person at SBA. Anyway, now you know for sure I'm legit. Bruce Shirk

Bruce Shirk
202.741.8426 | d
202.312.9503 | df
202.468.6853 | c
<mailto:BShirk@sheppardmullin.com> | <http://www.sheppardmullin.com/bshirk>

SheppardMullin
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W.
11th Floor East
Washington, DC 20005-3314
202.218.0000 | p
<http://www.sheppardmullin.com>

-----Original Message-----

From: Ernest Green [mailto:egreen@eenterprisesinc.com]
Sent: Tuesday, June 14, 2011 3:35 PM
To: Camillo.DeSantis@deca.mil
Cc: Bruce Shirk
Subject: FW: Attorney Representation Letter

Ms. DeSantis,

Attached is a copy of the "Attorney Representation Letter." I am also sending the original by FedEx today. Please let me know if you require anything else.

Sincerely,

Ernest

Ernest Green Jr., President/CEO
E&E Enterprises Global, Inc.
101 Research Drive
Hampton, VA. 23666
Phone: 757-826-9532
Toll Free: 866-314-5860
Cell: 757-876-5562
Fax: 757-265-9750

E&E Enterprises Global, Inc. (E&E) is an 8 (a) Certified Firm, a Service Disabled Veteran Owned Firm; a Certified Small Disadvantaged Business and a Certified Minority Business Enterprise (MBE). We are also a GSA Schedule Contract Holder (GS-35-F-0779N, Schedule 70, IT Professional). We are registered in CCR, ProNet and ORCA and we are also listed on Dun & Bradstreet.

visit <http://www.xerox.com/>

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Attention: This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

EXHIBIT 4

Kruse, Arthur L CIV DISA PLD

From: Shultz, Scott M. CIV DeCA HQ PM [Scott.Shultz@deca.mil]
Sent: Friday, January 16, 2009 7:14 AM
To: Ron Hill
Cc: Leonard, Brenda K CIV DISA PLD; Bill Casiday; Scott, Louis CIV DeCA HQ PM; Boring, Mike CIV DeCA HQ PM; DeCA TSR; DeCA HQ PMI NOC SFT; Donnelly, Thomas M.
Subject: RE: DSL/VSAT Authorization Letter
Attachments: DeCA Authorization.pdf

Ron,

Please see attached. Let me know of any concerns/questions.

R,
Scott

Scott Shultz, GSLC, GSNA
Chief, Infrastructure/NetComm Division
Directorate of Program Management
Headquarters
Defense Commissary Agency (DeCA)
804-734-8000, ext 48834

-----Original Message-----

From: Boring, Mike CIV DeCA HQ PM
Sent: Thursday, January 15, 2009 3:29 PM
To: 'Ron Hill'; Shultz, Scott M. CIV DeCA HQ PM; Scott, Louis CIV DeCA HQ PM; DeCA HQ PMI NOC SFT; DeCA TSR
Cc: 'Leonard, Brenda K CIV DISA PLD'; 'Bill Casiday'
Subject: RE: Authorization Letter

Ron,

Scott asked me to let you know that you'll have the letter tomorrow.

Mike

-----Original Message-----

From: Ron Hill [mailto:rhil@eeenterprisesinc.com]
Sent: Thursday, January 15, 2009 9:44 AM
To: Boring, Mike CIV DeCA HQ PM; Shultz, Scott M. CIV DeCA HQ PM; Scott, Louis CIV DeCA HQ PM; DeCA HQ PMI NOC SFT; DeCA TSR
Cc: 'Leonard, Brenda K CIV DISA PLD'; 'Bill Casiday'
Subject: RE: Authorization Letter

Mike:

I have attached a copy of an authorization letter we were issued for another project to take over existing circuits. DeCA's letter would need to say that E&E and/or is subcontractors has the authority to order circuits on DeCA's behalf in support of the current contract. Let me know if you have any questions. Thanks.

Ron

-----Original Message-----

From: Boring, Mike CIV DeCA HQ PM [mailto:Mike.Boring@deca.mil]
Sent: Thursday, January 15, 2009 7:36 AM
To: Ron Hill; Shultz, Scott M. CIV DeCA HQ PM; Scott, Louis CIV DeCA HQ PM; DeCA HQ PMI NOC SFT; DeCA TSR
Cc: Leonard, Brenda K CIV DISA PLD; Bill Casiday
Subject: RE: Authorization Letter

Ron,

Please provide us a template of what you are looking for and we'll turn it around right away.

Mike

-----Original Message-----

From: Ron Hill [mailto:rhill@eeenterprisesinc.com]
Sent: Wednesday, January 14, 2009 11:01 PM
To: Shultz, Scott M. CIV DeCA HQ PM; Scott, Louis CIV DeCA HQ PM; Boring, Mike CIV DeCA HQ PM; DeCA HQ PMI NOC SFT; DeCA TSR
Cc: 'Leonard, Brenda K CIV DISA PLD'; 'Bill Casiday'
Subject: Authorization Letter

Team:

Do you think the authorization letter will be ready within the next day or two? I am afraid that if we do not get it submitted this week, we run the risk of not getting DSL installed during the week of the VSAT install at Ramstein. Thank you.

Regards,

Ronald Hill

Contracts Manager

E&E Enterprises Global, Inc.

20 Basil Sawyer Drive

Hampton, VA 23666

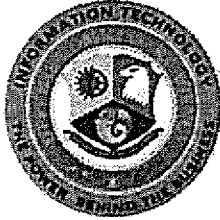
Phone: 757-265-8330

Fax: 757-265-9750

www.eeenterprisesinc.com <<http://www.eeenterprisesinc.com>>

E&E Enterprises Global, Inc. (E&E) is an 8 (a) and Service Disabled Veteran Owned small business. E&E is GSA Schedule 70 (GS-35-F-0779N, IT Professional) and SATCOM II contract holder. We are registered in CCR and ORCA and we are also listed on Dun & Bradstreet.

January 16, 2009



MFR 20090116

To: Whom it may concern

Fm: Scott Shultz, DeCA-HQ

Via: Brenda Leonard, DITCO-Scott Contracting Officer

Subject: Authorization To Order Circuits

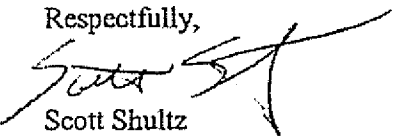
The intent of this document is to serve as official authorization for E&E Enterprises and/or its subcontractors to order circuits on DeCA's behalf in support of the current DSL/VSAT contract.

Please contact the following government personnel regarding any questions/concerns:

Brenda K. Leonard	Mike Boring, CISSP
Contracting Officer	DeCA HQ DSL/VSAT PM
DISA/DITCO-Scott PL8222	Infrastructure/NetComm Division
618-229-9667, DSN 312-779-9667	Phone: 804.734.8000 Ext. 48825

Scott Shultz, GSLC, GSNA
Chief, Infrastructure/NetComm Division
Directorate of Program Management
Headquarters, Defense Commissary Agency (DeCA)
804-734-8000, ext 48834

Respectfully,


Scott Shultz
DeCA-HQ
Fort Lee, VA